In the High Court of Punjab and Haryana, Chandigarh

C.W.P. No. 20156 of 2005

Date of Decision: 7.11.2006

Amar Singh

…Petitioner

Versus

State of Haryana and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE M.M.S. BEDI

PRESENT: Mr. R.D.S. Nirban, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for respondent No. 1.

Mr. R.S. Malik, Advocate,
for respondent No. 2 and 3.

JUDGMENT

M.M. KUMAR, J. (Oral)

The petitioner was initially appointed as Cattle Scarer on 12.4.1985 on daily wage basis at the rate of Rs. 13/- per day, by the Secretary Market Committee, Mohindergarh. It is claimed that on

5.2.1988, he was informed that his services were terminated with effect from 1.5.1987. The petitioner issued a demand notice to respondent Nos. 2 and 3 to reinstate him in service but the same was declined and consequently a reference under Section 10 of the Industrial Disputes Act, 1947 was referred to the Labour Court, Gurgaon by the Governor of Haryana on 13.6.1988. The Labour Court vide award dated 13.10.1992 ordered reinstatement of the petitioner in service with continuity of service with full back wages. Respondent Nos. 2 and 3 challenged the award of the Labour Court in this Court by filing C.W.P. No. 3326 of 1993, which was dismissed vide order dated 6.4.1993 (P-3). On 1.9.1993, the petitioner was asked to rejoin his duty. Subsequently, a sanctioned post of Cattle Scarer was created and the services of the petitioner were regularised w.e.f. 6.6.1995 (P-4). The petitioner retired on attaining the age of superannuation on 29.4.2003. It has been claimed that by that time he has completed 18 years of continuous and regular service. He made several requests to respondent Nos. 2 and 3 for the release of his pension and other pensionary benefits in accordance with the Civil Service Rules applicable to the petitioner but the same were not granted. He then got served a legal notice through his counsel on 18.2.2005 (P-5) claiming that he had served continuously w.e.f. 12.4.1985 to 29.11.2003 i.e. for more than 18 years, therefore, he may be granted pension and other pensionary benefits. When no response was received, the petitioner filed C.W.P. No. 8223 of 2005 in this Court, which was disposed of vide order dated 24.5.2005 and a

direction was issued to the respondents to decide the legal notice served by the petitioner and to take a final decision within four months whether pension is admissible to the petitioner or not. In pursuance to the aforementioned direction, respondent No. 3 has passed an order dated 21.9.2005 holding that the petitioner cannot be granted pension as per the rules (P-6). The order dated 21.9.2005 (P-6) is the subject matter of challenge in this petition.

In the written statement filed on behalf of respondent Nos. 2 and 3 the stand taken is that the petitioner joined the service as a Cattle Scarer on 7.5.1985 on daily wage basis. Details of No. of days on which the petitioner has worked for different intervals has been given in a chart (R-1), which is extracted as under:-

Period	No. of days	Remarks
7.5.85 to 31.5.85	25	Part time Cattle Scarer
1.6.85 to 30.6.85	30	Part time Cattle Scarer
1.7.85 to 11.7.85	10	Part time Cattle Scarer
12.7.85 to 31.7.85	20	Daily wages as Waterman
1.8.85 to 31.8.85	31	Daily wages as Waterman
1.9.85 to 30.9.85	30	Daily wages as Waterman
1.10.85 to 29.10.82	29	Daily wages as Waterman
30.10.85 to 31.10.85	2	Break. Not remain on duty during this period.
1.11.85 to 30.11.85	30	Daily wages as Waterman
1.12.85 to 31.1.86	62	Daily wages as Waterman
1.2.86 to 1.6.86		Break of about 5 months. He was not remain on duty.
2.6.86 to 30.6.86	29	Daily wages as Waterman
1.7.86 to 31.7.86	31	Daily wages as Waterman

1.8.86 to 31.8.86	31	Daily wages as Waterman
1.9.86 to 30.9.86	30	Daily wages as Waterman
1.10.86 to 31.10.86	31	Daily wages as Waterman
1.11.86 to 30.11.86	30	Daily wages as Waterman

It has been asserted that w.e.f. 1.12.1986 to 31.12.1993, the petitioner was not on duty. With effect from 1.4.1994 to 5.7.1995 he remained on duty as Cattle Scarer on daily wage/part time basis. It has further been asserted that the petitioner was given fresh appointment w.e.f. 6.7.1995 against the post of Cattle Scarer (R-2). According to the respondents as per the service record of the petitioner he has completed only 8 years 4 months and 24 days in service and, thus, he is not entitled to pension and other pensionary benefits, inasmuch as, he has not completed the qualifying service of 10 years as per Rule 6.16 of the Civil Services Rules, Volume II.

We have heard the learned counsel for the parties at some length and find that the case of the petition is squarely covered by the judgment of Full Bench of this Court in the case of **Kesar Chand v. State of Punjab, 1988 (2) PLR 223**. The principle of law laid down by their Lordships' of the Full Bench is that the work charge service rendered by an employee followed by regularisation is entitled to be considered as a qualifying service for the purposes of pension. Even otherwise, Rule 3.17A has now been incorporated in the Punjab Civil Service Rules, Volume II, Part-I (as applicable to Haryana) in pursuance to the judgment of the Full Bench which

envisages that all service interrupted or continuous followed by confirmation has to be treated as qualifying service and the period of breaks is to be omitted while working out aggregate service. Therefore, we are of the view that the claim made by the petitioner for reckoning the service rendered by him on daily wage basis, as qualifying service for pension is meritorious. The view of the Full Bench is discernible from the following para:

> "Once the services of a work charged employee have been regularised, there appears to be hardly any logic to deprive him of the pensionary benefits as are available to other public servants under rule 3.17 of the Rules. Equal protection of laws must mean the protection of equal laws for all persons similarly situated. Article 14 strikes at arbitrariness because a provision which is arbitrary involves the negation of equality. Even the temporary or officiating service under the State Government has to be reckoned for determining the qualifying service. It looks to be illogical that the period of service spent by an employee in a work charged establishment before his regularisation has not been taken into consideration for determining his qualifying service. The classification which is sought to be made among Government servants who are eligible for pension and those who started as work charged employees and their services regularised subsequently, and the others is not based on any

> intelligible criteria and, therefore, is not sustainable at law. After the services of a work charged employees have been regularised, he is a public servant like any other servant. To deprive him of the pension is not only unjust and inequitable but is hit by the vice of arbitrariness, and for these reasons the provisions of rule (ii) of rule 3.17 of the Rules have to be struck down being violative of Article 14 of the Constitution."

The aforementioned celebrated authority in Kesar Chand's case (supra) has been followed and applied in the cases of **Hazura Singh v. State of Punjab, 2004 (1) SCT 695; Mangat Ram v. Haryana Vidyut Prasaran Nigam Ltd., 2005 (4) SCT 302** and our judgment in **Raj Kumar Sharma v. State of Haryana** (C.W.P. No. 14774 of 2004, decided on 18.4.2006).

Thus, on principle, precedents as well as the rules, the claim of the petitioner deserves to be accepted. It remains undisputed that the petitioner was reinstated in service by the award of the Labour Court dated 13.10.1992 (Annexure P-2). According to the award of the Labour Court, the petitioner who was retrenched from service on 13.11.1986 as a Cattle Scarer was reinstated in service with fullback wages. He was also granted the benefit of continuity of service, therefore, it has to be concluded that the petitioner rendered service as a Cattle Scarer w.e.f. 12.4.1985 till 1.9.1993 when he was allowed to rejoin. It is admitted case of the parties that the services of the petitioner were regularised by creating a post of a Cattle Scarer

w.e.f. 6.6.1995. The petitioner subsequently retired on attaining superannuation on 30.11.2003. The respondent has refused to grant him any pension on the ground that his regular service is less than 8 years 4months and 24 days. The operative part of the order dated 21.9.2005 expressing the aforementioned view reads as under:-

> "Board has sanctioned one post of C/S vide their letter No.34287 dt.8.6.95 in the budget for the year 1995-96 on which Sh. Amar Singh was appointed as C/S on regular basis on 6.7.95 vide committee resolution No.4 II dt.28.6.95 since he was working on this post. He retired on 30.11.2003. He was ex-serviceman. Like this his service is 8 years 4 months and 24 days. Gratuity was paid as per rules. He has filed writ petition No. 8223 of 2005 in the Hon'ble Punjab and Haryana High Court for grant of pension which was decided on 24.5.05. The Hon'ble Court has ordered to decide within 4 months whether pension is payable or not. Therefore, this office has decided on the basis of facts mentioned above, pension cannot be granted as per rules, submitted for further necessary action."

It is thus obvious that the petitioner has rendered work charge service from 12.4.1985 till 31.8.1993 when he was allowed to rejoin after the award of the Labour Court. His services were regularised w.e.f. 6.6.1995, therefore, his whole work charge service preceding the date of his regularisation has to be considered as

qualifying service for the purpose of pension and other retiral benefits.

Accordingly, we allow the writ petition and direct the respondents to tag the period of service rendered by the petitioner on daily wage basis, as extracted above, with regular service by treating the same as qualifying service. The pension of the petitioner be accordingly calculated and monetary/retiral benefits in the form of arrears of pension/gratuity etc. accruing there from be paid to him. The petitioner shall also be entitled to interest at the rate of 9% from the date pension was payable till the date of actual payment. The needful shall be done within a period of two months from the date a certified copy of this order is presented to the respondents.

(M.M. KUMAR)
JUDGE

(M.M.S. BEDI)

November 7, 2006
JUDGE

Pkapoor/nk